

AMENDED IN SENATE APRIL 30, 2012

AMENDED IN SENATE APRIL 18, 2012

AMENDED IN SENATE MARCH 29, 2012

**SENATE BILL**

**No. 1335**

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**Introduced by Senator Pavley**

February 24, 2012

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An act to amend Sections 34171, 34177, *and* 34180, ~~and 34181~~ of the Health and Safety Code, relating to redevelopment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1335, as amended, Pavley. Redevelopment: brownfield sites.

Existing law dissolved redevelopment agencies and community development agencies, as of February 1, 2012, and provides for the designation of successor agencies, as defined. Existing law imposes various requirements on successor agencies and subjects successor agency actions to the review of oversight boards. Existing law requires successor agencies to wind down the affairs of the dissolved redevelopment agencies and to, among other things, dispose of assets and properties of the former redevelopment agencies, as directed by the oversight board. Existing law requires proceeds from the sale of assets that are no longer needed to be transferred to the county auditor-controller for distribution as property tax proceeds to taxing entities, as prescribed.

This bill would authorize a successor agency to retain ~~land of property~~ *obtained by* the former redevelopment agency ~~that is a brownfield site, as defined~~, for specified remediation or removal purposes *of the release of hazardous substances, as defined, at a brownfield site* using available financing, funds, and grants, *subject to approval of the oversight board*

*pursuant to specified procedures.* Upon completion of remediation, the bill would require the successor agency to dispose of the ~~land~~ *property* pursuant to existing asset disposition provisions. The bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 34171 of the Health and Safety Code is  
2     amended to read:  
3     34171. The following terms shall have the following meanings:  
4     (a) “Administrative budget” means the budget for administrative  
5     costs of the successor agencies as provided in Section 34177.  
6     (b) “Administrative cost allowance” means an amount that,  
7     subject to the approval of the oversight board, is payable from  
8     property tax revenues of up to 5 percent of the property tax  
9     allocated to the successor agency for the 2011–12 fiscal year and  
10    up to 3 percent of the property tax allocated to the Redevelopment  
11    Obligation Retirement Fund money that is allocated to the  
12    successor agency for each fiscal year thereafter; provided, however,  
13    that the amount shall not be less than two hundred fifty thousand  
14    dollars (\$250,000) for any fiscal year or such lesser amount as  
15    agreed to by the successor agency. However, the allowance amount  
16    shall exclude any administrative costs that can be paid from bond  
17    proceeds or from sources other than property tax.  
18    (c) “Designated local authority” shall mean a public entity  
19    formed pursuant to subdivision (d) of Section 34173.  
20    (d) (1) “Enforceable obligation” means any of the following:  
21    (A) Bonds, as defined by Section 33602 and bonds issued  
22    pursuant to Section 58383 of the Government Code, including the  
23    required debt service, reserve set-asides, and any other payments  
24    required under the indenture or similar documents governing the  
25    issuance of the outstanding bonds of the former redevelopment  
26    agency.  
27    (B) Loans of moneys borrowed by the redevelopment agency  
28    for a lawful purpose, to the extent they are legally required to be  
29    repaid pursuant to a required repayment schedule or other  
30    mandatory loan terms.

(C) Payments required by the federal government, preexisting obligations to the state or obligations imposed by state law, other than passthrough payments that are made by the county auditor-controller pursuant to Section 34183, or legally enforceable payments required in connection with the agencies' employees, including, but not limited to, pension payments, pension obligation debt service, unemployment payments, or other obligations conferred through a collective bargaining agreement.

(D) Judgments or settlements entered by a competent court of law or binding arbitration decisions against the former redevelopment agency, other than passthrough payments that are made by the county auditor-controller pursuant to Section 34183. Along with the successor agency, the oversight board shall have the authority and standing to appeal any judgment or to set aside any settlement or arbitration decision.

(E) Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy. However, nothing in this act shall prohibit either the successor agency, with the approval or at the direction of the oversight board, or the oversight board itself from terminating any existing agreements or contracts and providing any necessary and required compensation or remediation for such termination.

(F) Contracts or agreements necessary for the administration or operation of the successor agency, in accordance with this part, including, but not limited to, agreements to purchase or rent office space, equipment and supplies, and pay-related expenses pursuant to Section 33127 and for carrying insurance pursuant to Section 33134.

(G) Amounts borrowed from or payments owing to the Low and Moderate Income Housing Fund of a redevelopment agency, which had been deferred as of the effective date of the act adding this part; provided, however, that the repayment schedule is approved by the oversight board.

(2) For purposes of this part, "enforceable obligation" does not include any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency. However, written agreements entered into (A) at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and (B) solely for the purpose of securing or repaying those

1 indebtedness obligations may be deemed enforceable obligations  
2 for purposes of this part. Notwithstanding this paragraph, loan  
3 agreements entered into between the redevelopment agency and  
4 the city, county, or city and county that created it, within two years  
5 of the date of creation of the redevelopment agency, may be  
6 deemed to be enforceable obligations.

7 (3) Contracts or agreements between the former redevelopment  
8 agency and other public agencies, to perform services or provide  
9 funding for governmental or private services or capital projects  
10 outside of redevelopment project areas that do not provide benefit  
11 to the redevelopment project and thus were not properly authorized  
12 under Part 1 (commencing with Section 33000) shall be deemed  
13 void on the effective date of this part; provided, however, that such  
14 contracts or agreements for the provision of housing properly  
15 authorized under Part 1 (commencing with Section 33000) shall  
16 not be deemed void.

17 (e) “Indebtedness obligations” means bonds, notes, certificates  
18 of participation, or other evidence of indebtedness, issued or  
19 delivered by the redevelopment agency, or by a joint exercise of  
20 powers authority created by the redevelopment agency, to  
21 third-party investors or bondholders to finance or refinance  
22 redevelopment projects undertaken by the redevelopment agency  
23 in compliance with the Community Redevelopment Law (Part 1  
24 (commencing with Section 33000)).

25 (f) ~~“Land of—~~“Oversight board” shall mean each entity  
26 established pursuant to Section 34179.

27 (g) “Property obtained by the former redevelopment agency  
28 that is a brownfield site” means contaminated parcels and  
29 surrounding or nearby related parcels that are considered part of  
30 the site for the purpose of financing the remediation and  
31 redevelopment of the site.

32 ~~(g) “Oversight board” shall mean each entity established~~  
33 ~~pursuant to Section 34179.~~

34 (h) “Recognized obligation” means an obligation listed in the  
35 Recognized Obligation Payment Schedule.

36 (i) “Recognized Obligation Payment Schedule” means the  
37 document setting forth the minimum payment amounts and due  
38 dates of payments required by enforceable obligations for each  
39 six-month fiscal period as provided in subdivision (m) of Section  
40 34177.

1 (j) “School entity” means any entity defined as such in  
2 subdivision (f) of Section 95 of the Revenue and Taxation Code.

3 (k) “Successor agency” means the county, city, or city and  
4 county that authorized the creation of each redevelopment agency  
5 or another entity as provided in Section 34173.

6 (l) “Taxing entities” means cities, counties, a city and county,  
7 special districts, and school entities, as defined in subdivision (f)  
8 of Section 95 of the Revenue and Taxation Code, that receive  
9 passthrough payments and distributions of property taxes pursuant  
10 to the provisions of this part.

11 SEC. 2. Section 34177 of the Health and Safety Code is  
12 amended to read:

13 34177. Successor agencies are required to do all of the  
14 following:

15 (a) Continue to make payments due for enforceable obligations.

16 (1) On and after February 1, 2012, and until a Recognized  
17 Obligation Payment Schedule becomes operative, only payments  
18 required pursuant to an enforceable obligations payment schedule  
19 shall be made. The initial enforceable obligation payment schedule  
20 shall be the last schedule adopted by the redevelopment agency  
21 under Section 34169. However, payments associated with  
22 obligations excluded from the definition of enforceable obligations  
23 by paragraph (2) of subdivision (e) of Section 34171 shall be  
24 excluded from the enforceable obligations payment schedule and  
25 be removed from the last schedule adopted by the redevelopment  
26 agency under Section 34169 prior to the successor agency adopting  
27 it as its enforceable obligations payment schedule pursuant to this  
28 subdivision. The enforceable obligation payment schedule may  
29 be amended by the successor agency at any public meeting and  
30 shall be subject to the approval of the oversight board as soon as  
31 the board has sufficient members to form a quorum.

32 (2) The Department of Finance and the Controller shall each  
33 have the authority to require any documents associated with the  
34 enforceable obligations to be provided to them in a manner of their  
35 choosing. Any taxing entity, the department, and the Controller  
36 shall each have standing to file a judicial action to prevent a  
37 violation under this part and to obtain injunctive or other  
38 appropriate relief.

39 (3) Commencing on May 1, 2012, only those payments listed  
40 in the Recognized Obligation Payment Schedule may be made by

1 the successor agency from the funds specified in the Recognized  
2 Obligation Payment Schedule. In addition, commencing May 1,  
3 2012, the Recognized Obligation Payment Schedule shall supersede  
4 the Statement of Indebtedness, which shall no longer be prepared  
5 nor have any effect under the Community Redevelopment Law.

6 (4) Nothing in the act adding this part is to be construed as  
7 preventing a successor agency, with the prior approval of the  
8 oversight board, as described in Section 34179, from making  
9 payments for enforceable obligations from sources other than those  
10 listed in the Recognized Obligation Payment Schedule.

11 (5) From February 1, 2012, to July 1, 2012, a successor agency  
12 shall have no authority and is hereby prohibited from accelerating  
13 payment or making any lump-sum payments that are intended to  
14 prepay loans unless such accelerated repayments were required  
15 prior to the effective date of this part.

16 (b) Maintain reserves in the amount required by indentures,  
17 trust indentures, or similar documents governing the issuance of  
18 outstanding redevelopment agency bonds.

19 (c) Perform obligations required pursuant to any enforceable  
20 obligation.

21 (d) Remit unencumbered balances of redevelopment agency  
22 funds to the county auditor-controller for distribution to the taxing  
23 entities, including, but not limited to, the unencumbered balance  
24 of the Low and Moderate Income Housing Fund of a former  
25 redevelopment agency. In making the distribution, the county  
26 auditor-controller shall utilize the same methodology for allocation  
27 and distribution of property tax revenues provided in Section  
28 34188.

29 (e) (1) Dispose of assets and properties of the former  
30 redevelopment agency as directed by the oversight board; provided,  
31 however, that the oversight board may instead direct the successor  
32 agency to transfer ownership of certain assets pursuant to  
33 subdivision (a) of Section 34181. The disposal is to be done  
34 expeditiously and in a manner aimed at maximizing value. Proceeds  
35 from asset sales and related funds that are no longer needed for  
36 approved development projects or to otherwise wind down the  
37 affairs of the agency, each as determined by the oversight board,  
38 shall be transferred to the county auditor-controller for distribution  
39 as property tax proceeds under Section 34188.

(2) Notwithstanding paragraph (1), a successor agency may, *subject to the approval of an oversight board pursuant to Section 34180*, retain ~~land of property obtained by~~ the former redevelopment agency ~~that is a brownfield site~~ for the purpose of the remediation or removal of the release of hazardous substances, as defined in Section 33459, *at a brownfield, site* on, under, or from the property, using available financing, funds obtained from a responsible party, existing state or federal grants, or any other funds at the disposal of the successor agency in order to maximize value of the asset. Upon completion of the remediation or removal of hazardous substances from the brownfield site, the successor agency shall dispose of the property pursuant to paragraph (1).

(f) Enforce all former redevelopment agency rights for the benefit of the taxing entities, including, but not limited to, continuing to collect loans, rents, and other revenues that were due to the redevelopment agency.

(g) Effectuate transfer of housing functions and assets to the appropriate entity designated pursuant to Section 34176.

(h) Expeditiously wind down the affairs of the redevelopment agency pursuant to the provisions of this part and in accordance with the direction of the oversight board.

(i) Continue to oversee development of properties until the contracted work has been completed or the contractual obligations of the former redevelopment agency can be transferred to other parties. Bond proceeds shall be used for the purposes for which bonds were sold unless the purposes can no longer be achieved, in which case, the proceeds may be used to defease the bonds.

(j) Prepare a proposed administrative budget and submit it to the oversight board for its approval. The proposed administrative budget shall include all of the following:

(1) Estimated amounts for successor agency administrative costs for the upcoming six-month fiscal period.

(2) Proposed sources of payment for the costs identified in paragraph (1).

(3) Proposals for arrangements for administrative and operations services provided by a city, county, city and county, or other entity.

(k) Provide administrative cost estimates, from its approved administrative budget that are to be paid from property tax revenues deposited in the Redevelopment Property Tax Trust Fund, to the county auditor-controller for each six-month fiscal period.

1 (l) (1) Before each six-month fiscal period, prepare a  
2 Recognized Obligation Payment Schedule in accordance with the  
3 requirements of this paragraph. For each recognized obligation,  
4 the Recognized Obligation Payment Schedule shall identify one  
5 or more of the following sources of payment:

6 (A) Low and Moderate Income Housing Fund.

7 (B) Bond proceeds.

8 (C) Reserve balances.

9 (D) Administrative cost allowance.

10 (E) The Redevelopment Property Tax Trust Fund, but only to  
11 the extent no other funding source is available or when payment  
12 from property tax revenues is required by an enforceable obligation  
13 or by the provisions of this part.

14 (F) Other revenue sources, including rents, concessions, asset  
15 sale proceeds, interest earnings, and any other revenues derived  
16 from the former redevelopment agency, as approved by the  
17 oversight board in accordance with this part.

18 (2) A Recognized Obligation Payment Schedule shall not be  
19 deemed valid unless all of the following conditions have been met:

20 (A) A draft Recognized Obligation Payment Schedule is  
21 prepared by the successor agency for the enforceable obligations  
22 of the former redevelopment agency by March 1, 2012. From  
23 October 1, 2011, to July 1, 2012, the initial draft of that schedule  
24 shall project the dates and amounts of scheduled payments for  
25 each enforceable obligation for the remainder of the time period  
26 during which the redevelopment agency would have been  
27 authorized to obligate property tax increment had such a  
28 redevelopment agency not been dissolved, and shall be reviewed  
29 and certified, as to its accuracy, by an external auditor designated  
30 pursuant to Section 34182.

31 (B) The certified Recognized Obligation Payment Schedule is  
32 submitted to and duly approved by the oversight board.

33 (C) A copy of the approved Recognized Obligation Payment  
34 Schedule is submitted to the county auditor-controller and both  
35 the Controller's office and the Department of Finance and be posted  
36 on the successor agency's Internet Web site.

37 (3) The Recognized Obligation Payment Schedule shall be  
38 forward looking to the next six months. The first Recognized  
39 Obligation Payment Schedule shall be submitted to the Controller's  
40 office and the Department of Finance by April 15, 2012, for the



1 period of January 1, 2012, to June 30, 2012, inclusive. Former  
2 redevelopment agency enforceable obligation payments due, and  
3 reasonable or necessary administrative costs due or incurred, prior  
4 to January 1, 2012, shall be made from property tax revenues  
5 received in the spring of 2011 property tax distribution, and from  
6 other revenues and balances transferred to the successor agency.

7 SEC. 3. Section 34180 of the Health and Safety Code is  
8 amended to read:

9 34180. All of the following successor agency actions shall first  
10 be approved by the oversight board:

11 (a) The establishment of new repayment terms for outstanding  
12 loans where the terms have not been specified prior to the date of  
13 this part.

14 (b) Refunding of outstanding bonds or other debt of the former  
15 redevelopment agency by successor agencies in order to provide  
16 for savings or to finance debt service spikes; provided, however,  
17 that no additional debt is created and debt service is not accelerated.

18 (c) Setting aside of amounts in reserves as required by  
19 indentures, trust indentures, or similar documents governing the  
20 issuance of outstanding redevelopment agency bonds.

21 (d) Merging of project areas.

22 (e) Continuing the acceptance of federal or state grants, or other  
23 forms of financial assistance from either public or private sources,  
24 where assistance is conditioned upon the provision of matching  
25 funds, by the successor entity as successor to the former  
26 redevelopment agency, in an amount greater than 5 percent.

27 (f) (1) If a city, county, or city and county wishes to retain any  
28 properties or other assets for future redevelopment activities,  
29 funded from its own funds and under its own auspices, it must  
30 reach a compensation agreement with the other taxing entities to  
31 provide payments to them in proportion to their shares of the base  
32 property tax, as determined pursuant to Section 34188, for the  
33 value of the property retained.

34 (2) If no other agreement is reached on valuation of the retained  
35 assets, the value will be the fair market value as of the 2011  
36 property tax lien date as determined by the county assessor.

37 (g) Establishment of the Recognized Obligation Payment  
38 Schedule.

1 (h) A request by the successor agency to enter into an agreement  
2 with the city, county, or city and county that formed the  
3 redevelopment agency that it is succeeding.

4 (i) A request by a successor agency or taxing entity to pledge,  
5 or to enter into an agreement for the pledge of, property tax  
6 revenues pursuant to subdivision (b) of Section 34178.

7 (j) ~~(1) The retention of land of the former redevelopment agency~~  
8 ~~that is a brownfield site for purposes of remediation or removal,~~  
9 ~~pursuant to paragraph (2) of subdivision (e) of Section 34177~~  
10 *property obtained by the former redevelopment agency that is a*  
11 *brownfield site for the purpose of the remediation or removal of*  
12 *the release of hazardous substances at a brownfield site pursuant*  
13 *to paragraph (2) of subdivision (e) of Section 34177.*

14 *(2) A request by a successor agency to solicit and accept federal*  
15 *or state grants for the purposes described in paragraph (1) where*  
16 *assistance is conditioned upon the provision of matching funds by*  
17 *the successor agency in an amount greater than 5 percent. The*  
18 *oversight board may approve a request of the successor agency*  
19 *to enter into an enforceable obligation to provide matching funds*  
20 *if the successor agency can demonstrate that available financing,*  
21 *funds obtained from a responsible party, existing state or federal*  
22 *grants, or any other funds at the disposal of the successor agency*  
23 *are not sufficient to provide the matching funds.*

24 *(3) A request by a successor agency to enter into an enforceable*  
25 *obligation for the purposes described in paragraph (1). The*  
26 *oversight board may approve the request if the successor agency*  
27 *can demonstrate that available financing, funds obtained from a*  
28 *responsible party, state or federal grants, or any other funds at*  
29 *the disposal of the successor agency are not sufficient to remediate*  
30 *the property and either of the following are applicable:*

31 *(A) Remediation of the site will maximize its value.*

32 *(B) Failure to remediate the site poses an imminent threat to*  
33 *public health, safety, or the environment.*

34 *(k) If an oversight board denies a request made by a successor*  
35 *agency pursuant to paragraph (2) or (3) of subdivision (j), the*  
36 *board shall approve findings stating that the contamination at the*  
37 *brownfield site in question does not pose an imminent threat to*  
38 *public health, safety, or the environment.*

39 ~~SEC. 4. Section 34181 of the Health and Safety Code is~~  
40 ~~amended to read:~~

1     ~~34181. The oversight board shall direct the successor agency~~  
2 ~~to do all of the following:~~

3     ~~(a) Dispose of all assets and properties of the former~~  
4 ~~redevelopment agency that were funded by tax increment revenues~~  
5 ~~of the dissolved redevelopment agency; provided, however, that~~  
6 ~~the oversight board may instead direct the successor agency to~~  
7 ~~transfer ownership of those assets that were constructed and used~~  
8 ~~for a governmental purpose, such as roads, school buildings, parks,~~  
9 ~~and fire stations, to the appropriate public jurisdiction pursuant to~~  
10 ~~any existing agreements relating to the construction or use of such~~  
11 ~~an asset or to retain land of the former redevelopment agency that~~  
12 ~~is a brownfield site for purposes of remediation or removal,~~  
13 ~~consistent with paragraph (2) of subdivision (c) of Section 34177.~~  
14 ~~Any compensation to be provided to the successor agency for the~~  
15 ~~transfer of the asset shall be governed by the agreements relating~~  
16 ~~to the construction or use of that asset. Disposal shall be done~~  
17 ~~expeditiously and in a manner aimed at maximizing value.~~

18     ~~(b) Cease performance in connection with and terminate all~~  
19 ~~existing agreements that do not qualify as enforceable obligations.~~

20     ~~(c) Transfer housing responsibilities and all rights, powers,~~  
21 ~~duties, and obligations along with any amounts on deposit in the~~  
22 ~~Low and Moderate Income Housing Fund to the appropriate entity~~  
23 ~~pursuant to Section 34176.~~

24     ~~(d) Terminate any agreement, between the dissolved~~  
25 ~~redevelopment agency and any public entity located in the same~~  
26 ~~county, obligating the redevelopment agency to provide funding~~  
27 ~~for any debt service obligations of the public entity or for the~~  
28 ~~construction, or operation of facilities owned or operated by such~~  
29 ~~public entity, in any instance where the oversight board has found~~  
30 ~~that early termination would be in the best interests of the taxing~~  
31 ~~entities.~~

32     ~~(e) Determine whether any contracts, agreements, or other~~  
33 ~~arrangements between the dissolved redevelopment agency and~~  
34 ~~any private parties should be terminated or renegotiated to reduce~~  
35 ~~liabilities and increase net revenues to the taxing entities, and~~  
36 ~~present proposed termination or amendment agreements to the~~  
37 ~~oversight board for its approval. The board may approve any~~  
38 ~~amendments to or early termination of such agreements where it~~

- 1 ~~finds that amendments or early termination would be in the best~~
- 2 ~~interests of the taxing entities.~~

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